

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

STATE OF MISSISSIPPI; STATE OF ALABAMA;
STATE OF ARKANSAS; COMMONWEALTH OF
KENTUCKY; STATE OF
LOUISIANA; STATE OF MISSOURI;
and STATE OF MONTANA,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Secretary of Health and
Human Services; THE UNITED
STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
CHIQUITA BROOKS-LASURE, in her
official capacity as Administrator of the
Centers for Medicare and Medicaid
Services; THE CENTERS FOR
MEDICARE AND MEDICAID
SERVICES; THE UNITED STATES
OF AMERICA,

Defendants.

No. 1:22-cv-113-HSO-RPM

DECLARATION OF DANIELLE GILLIAM

I, Danielle Gilliam, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge, and if called as a witness, I could and would competently testify to the following matters under oath.
2. I am the Health Chair of the Arizona State Conference of the National Association for the Advancement of Colored People (“Arizona NAACP”), a proposed intervenor in the above-captioned matter. This is a volunteer position. The Arizona NAACP is a nonpartisan, nonprofit organization that is an affiliate of the NAACP.
3. I am employed as a field-based Executive Medical Liaison with Novo Nordisk Inc. covering the Southwest region. Novo Nordisk is a global healthcare company, founded

in 1923 and headquartered just outside Copenhagen, Denmark, whose purpose is to drive change to defeat diabetes and other serious chronic diseases such as obesity, and rare blood and rare endocrine diseases.

4. I studied Chemistry at Xavier University and obtained my Master's Degree in Public Health Policy and Administration and a Doctorate in Pharmacy from the University of Illinois Chicago. I have experience as a clinical pharmacist, health educator, researcher, and community advocate. My area of expertise is cardiometabolic disease. I am also certified in health disparities, health education, and medical writing and editing. I have received several awards for my work in diversity, inclusion, and belonging, including the American Diabetes Association Phoenix Chapter Lily Hines-Marbley Memorial Outreach Award (2012, 2013), Arizona State Conference NAACP Committee Chair Person Award (2018), Novo Nordisk CMR Drive Change Award – DEI¹ in Clinical Trials (2022), AZ Pharmacy Association Pharmaceutical Associate of the Year (2022), and Novo Nordisk Office of D&I² Engaged Enthusiast Award (2019, 2020) and Novo Nordisk Circle of Excellence (2023).
5. I am authorized to provide this declaration on behalf of the Arizona NAACP. I have been the Arizona NAACP Health Chair since 2016. Before serving in my current role, I was the East Valley Branch NAACP Health Chair. As Health Chair, I interact with Arizona NAACP State Conference leadership and members about carrying out the mission of the organization related to health equity. The Arizona NAACP shares the mission of the NAACP, which is to “achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and

¹ DEI is an acronym for Diversity, Equity, and Inclusion.

² D&I is an acronym for Diversity and Inclusion

accelerate the well-being, education, and economic security of Black people and all persons of color.”³ The Arizona NAACP strives to implement this mission at the state level by advancing a variety of social issues including health justice.

6. The Arizona NAACP is a grassroots organization. We have 11 adult units, 5 college chapters, and 4 youth councils across the state. Altogether, the Arizona NAACP has thousands of members. Our membership consists largely of African Americans, but we aim to support all members of underrepresented and vulnerable communities. Many of our members are eligible for Medicare and/or are Medicare beneficiaries.
7. The Arizona NAACP has an interest in defending the Center for Medicare & Medicaid Services’ (“CMS”) anti-racism rule—a rule that seeks to diminish racial-health disparities by incentivizing Medicare providers to create and implement anti-racism plans.
8. *First*, the Arizona NAACP has an interest in defending the anti-racism rule because eliminating racial health disparities is an indispensable component of our mission to achieve equity and eliminate discrimination. Racism can have a significant impact on the health outcomes of patients who are members of marginalized communities. Studies have shown that racism can contribute to health disparities, including higher rates of chronic illness, mental health issues, and maternal and infant mortality. An anti-racism plan can help health care providers recognize and address health disparities by promoting diversity and inclusion in their practices, providing culturally sensitive care to all patients, and taking steps towards eliminating bias and discrimination. By implementing an anti-racism plan, health care providers can help to ensure that all patients receive the highest quality of care, regardless of their race or ethnicity.

³ NAACP, *Our Mission*, <https://naacp.org/about/mission-vision> (last visited May 8, 2023).

9. The Arizona NAACP Health Committee regularly demonstrates its interest in reducing racial health disparities by conducting health equity programming. We participate in and organize community events and health fairs. I often participate in these events to help educate our members and the community about health issues that disproportionately affect Black people and other people of color. As Health Chair, I sometimes meet with the chairs of other state conference NAACP health committees as well the national NAACP's Director of Health and Wellness to discuss ways in which we can address health disparities.
10. For example, the Arizona NAACP participated in the Dialysis Health Imperative for Access, Choice, and Equity ("ACE") program, a collaboration among Baxter, the NAACP, and the Alliance for Home Dialysis with the goal of informing individuals within African American communities in the U.S. about access to kidney care and the disproportionate impact kidney disease has on African Americans and other people of color. The program included a series of town hall events to discuss kidney health and identify the needed resources so patients would be more aware of their options earlier in the process.
11. There are many environmental, medical, and social factors that contribute to an increased risk of developing kidney disease, also known as chronic kidney disease ("CKD"). These factors include: having more than one disease (for example, high blood pressure or diabetes), your family's medical history, where you live, where you work, where you play, how you are perceived by others, and (in the case of people of color) how you have personally experienced discrimination. According to the National Kidney Foundation, while Black people make up about 13% of the population, they account for 35% of the

people with kidney failure in the United States.⁴ A growing number of Hispanic people are diagnosed with kidney disease each year — since 2000, the number of Hispanic people with kidney failure has increased by more than 70%.⁵ Diabetes is the leading cause of kidney failure among Indigenous people. “Black and Latinx patients are less likely than non-Latinx white patients to be treated with home dialysis: 7.3% of Black patients and 7.4% of Latinx prevalent patients with kidney failure are treated with home dialysis therapies, compared with 9.3% of non-Latinx white patients. The lower rates of home dialysis use in the Black and Latinx communities are not completely explained by geographic, demographic, and clinical factors.”⁶ Based on the limited studies of this issue, provider bias often leads to people of color being referred to dialysis centers rather than being offered home dialysis. They are often not told about home dialysis which has the potential to allow them to continue full time employment with little disruption to their regular routine.

12. In 2018, the Health Committee organized a health and wellness fair in Mesa, Arizona in partnership with the Arizona Kidney Foundation, the American Diabetes Association, and South Phoenix Baptist Church, where they had a comprehensive kidney screening and panel discussion with a nephrologist, Arizona state legislator, home dialysis representative, and a person living with kidney disease on home dialysis. A chronic

⁴ Nat’l Kidney Found., *Social Determinants of Kidney Disease*, <https://www.kidney.org/atoz/content/kidneydiscauses> (last visited May 8, 2023).

⁵ *Id.*

⁶ Katherine Rizzolo et al., *Racial and Ethnic Disparities in Home Dialysis Use in the United States: Barriers and Solutions*, 33 J. of the Am. Soc’y of Nephrology 1258, 1258 (2022), <https://journals.lww.com/jasn/pages/articleviewer.aspx?year=2022&issue=07000&article=00012&type=Fulltext> (citation omitted).

kidney disease lecture and interactive demonstration of an in-home dialysis machine was held at The Word Church in Mesa, Arizona.

13. As part of the Dialysis Health Imperative for ACE media campaign, I was interviewed on the Alvin Galloway show on RadioPhoenix.org, where I discussed kidney disease and its impact on communities of color. As a result of our efforts, the communities of color in the greater Phoenix metro area have an increased awareness around treatment options for End Stage Renal Disease including the benefits of home dialysis.

14. Black maternal and infant mortality is a key social justice focus among the NAACP. Black women are three times more likely to die from pregnancy related complications than their White counterparts. In Arizona “Black/African American and American Indian/Alaska Native infants have consistently had the highest rates of infant mortality from 2010-2019 In 2019, the infant mortality rate for Black/African Americans was 12.3 deaths per 1,000 live births and among American Indian/Alaska Natives was 6.1 deaths per 1,000 live births, whereas, the infant mortality rate among [w]hites was 3.6 deaths per 1,000 live births.”⁷ Social determinants of health play a role in Black maternal and infant morbidity and mortality, however, research has shown there are other factors at play like structural racism and implicit bias. On September 6, 2019, the CDC reported in their *Morbidity and Mortality Weekly Report (MMWR)*, the pregnancy related mortality ratios “(PRMRs) for black and AI/AN women with at least some college

⁷ Ariz. Child Fatality Review Team, *Twenty-Seventh Annual Report* (2020), <https://www.azdhs.gov/documents/prevention/womens-childrens-health/reports-fact-sheets/child-fatality-review-annual-reports/cfr-annual-report-2020.pdf>.

education were higher than those for all other racial/ethnic groups with less than a high school diploma.”⁸

15. As Health Chair, I am committed to representing the voice of my membership. I collaborated with an Arizona House of Representative legislator and a policy advisor identifying policies/laws that created or exacerbated disparities in maternal and infant health care. In 2021–2022, I was on the planning committee for the Arizona Department of Health Services (“AZDHS”) Bureau of Women’s and Children’s Health Mortality Review Program. In 2021, I presented *Maternal Health Outcomes: Chronic Health Conditions* at the Maternal and Infant Mortality Summit. Currently, I am a steering committee member on the AZDHS Maternal and Child Health Needs Assessment.
16. Also, the Arizona NAACP held a series of four townhall programs for the general public discussing SARS-CoV-2, COVID-19, and vaccines. People of all ages within and outside of Arizona participated virtually. I contacted one of the two Black FDA advisory committee members reviewing the Pfizer-BioNTech and Moderna COVID vaccine for emergency use authorization. I was honored when the committee member accepted my request to speak during our townhall on vaccines. I participated on a panel discussing the future of pandemics at the University of Arizona Honors College speaker series *Big Ideas, Grand Challenges* on September 29, 2021. On November 18, 2021, I presented on COVID-19 and Health Disparities to the Arizona Pharmacy Association. Then on February 10, 2022, I presented to the African American Conference on Disabilities sponsored by the Arizona Center for Disability Law regarding the rights of persons with

⁸ CDC, *Morbidity and Mortality Weekly Report (MMWR), Racial/Ethnic Disparities in Pregnancy-Related Deaths – United States, 2007-2016* (Sept. 6, 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6835a3.htm?s_cid=mm6835a3_w.

disabilities unable to receive COVID vaccines. There were over 15,000 virtual attendees from across Arizona, almost every state in the US, US Virgin Islands, Canada, Africa, and Europe.

17. As a trusted messenger in the Black community, it was imperative that I provided unbiased, evidence-based information about the pandemic to encourage the CDC's recommendations to control the spread of SARS-CoV-2, especially to Black Arizonians. The residents of Arizona were less likely to wear masks, practice social distancing, and get vaccinated. Arizona's death rates were similar to the countries with the highest COVID-19 deaths. Black and Hispanic people died from COVID-19 more than other racial groups.⁹
18. *Second*, the Arizona NAACP has an interest in defending CMS' anti-racism rule because it is likely to make medical providers more sensitive to the specific concerns of their Black patients, particularly older Black patients. Racism against Black people in health care has a sordid past, present, and future if drastic steps are not taken soon. Dr. Marion Sims, considered the father of OB/GYN for his vaginal fistula invention, experimented on Black women over 40 times without their consent or anesthesia. Sara Baartman was a full-figured woman whose naked body was exhibited for entertainment. Her brain and sexual organs were displayed in a Paris museum until 1974.
19. The most infamous medical racism against Black people occurred when the United States Public Health Service, began a study in 1932 to record the natural history of syphilis originally called the "Tuskegee Study of Untreated Syphilis in the Negro Male." Almost

⁹ Thomas J. Bollyky et al., *Assessing COVID-19 Pandemic Policies and Behaviours and Their Economic and Educational Trade-offs Across US States from Jan 1, 2020, to July 31, 2022: An Observational Analysis*, 401 *Lancet* 1341 (2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)00461-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)00461-0/fulltext).

400 Black men, who did not give consent, were not treated for syphilis even when penicillin became widely used as a treatment in 1943. The study finally ended October 1972 mainly due to an article written a year earlier by the Associated Press. I often wonder how long the study would have proceeded had a light not been shown on the unethical treatment of those men.

20. More recently, less than four years ago, two former Black football players sued the NFL for race-based adjustments in dementia testing.¹⁰ The NFL dementia testing policy used “race-norming” which assumed Black players start with lower cognitive function. This makes it harder to qualify for financial payouts.¹¹ Even more disturbing, if a claim was submitted without “race-norming” the results, the claim was denied.¹² Seventy percent of the NFL players are Black.¹³

21. I have been in the health care industry for over 20 years. I have witnessed and experienced medical racism personally. Our health care system needs advocates for those whose voices are often muted. For anyone to say that racism does not exist in the health care system only solidifies it more. Medical racism has a direct effect on the health of our members and Black people across the state and nation. In order to have a holistic approach to the health and wellness of a person, the health care professional needs to address socioeconomic factors, physical environment, health behaviors, in addition to health care. Only 20% of health comes from physical health, the remaining percentage of our health outcomes is dictated by social determinants. Fifty percent of your health can

¹⁰ *NFL Agrees to End Race-based Brain Testing in \$1B Settlement on Concussions*, The Associated Press (Oct. 20, 2021), <https://www.npr.org/2021/10/20/1047793751/nfl-concussion-settlement-race-norming-cte>.

¹¹ *Id.*

¹² *See id.*

¹³ *Id.*

be traced to your zip code. The CDC defines social determinates of health as “the nonmedical factors that influence health outcomes. They are the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life.”¹⁴ For instance, discrimination, racism, and microaggressions cause a low-grade inflammation response in our bodies. Many diseases result from inflammation like heart diseases, diabetes, obesity, breast cancer, and other illness disproportionately impacting people of color. “Allostatic load refers to the cumulative burden of chronic stress and life events. It involves the interaction of different physiological systems at varying degrees of activity. When environmental challenges exceed the individual ability to cope, then allostatic overload ensues.”¹⁵

22. The Arizona NAACP and its members will suffer if Plaintiffs succeed in striking down the anti-racism rule because of the disparities that exist in healthcare for people of color. Racism, discrimination, and bias among providers negatively affect the health of our members. Implicit racial bias in the health care system leads to “diagnostic uncertainty and, for Black patients, negative ratings of their clinical interactions, less patient-centeredness, poor provider communication, undertreatment of pain, views of Black patients as less medically adherent than White patients, and other ill effects.”¹⁶ Almost half of U.S. medical students surveyed reported having heard negative comments about Black patients by attending or resident physicians, resulting in those students

¹⁴ CDC, *Social Determinants of Health at CDC* (Dec. 8, 2022), <https://www.cdc.gov/about/sdoh/index.html>.

¹⁵ Jenny Guidi et al., *Allostatic Load and Its Impact on Health: A Systematic Review*, 90 *Psychother Psychosom* 11 (2020), <https://www.karger.com/Article/FullText/510696>.

¹⁶ Janice A. Sabin, *Tackling Implicit Bias In Health Care*, 387 *New England J. Med.* 105 (2022), <https://www.nejm.org/doi/full/10.1056/NEJMp2201180> (citation omitted).

exhibiting significantly greater implicit racial bias in year four than year one.¹⁷ The American Medical Association, the largest medical association representing the interests of physicians, recognizes racial bias in the health system and has implemented an equity plan to embed racial justice and advance health equity. AMA Trustee Willarda V. Edwards said, “[s]ystemic racism in medicine is the most serious barrier to the advancement of health equity and appropriate medical care.”¹⁸

23. This anti-racism rule supports the NAACP’s mission and its members. Rescission of the rule will likely impede the NAACP’s mission and goal in advancing health equity for its members. Numerous studies have shown that Black and brown patients have overwhelmingly suffered worse outcomes in the United States than white patients. Studies have also shown that at least part of the reason for those outcomes is racial stereotyping, implicit bias, and lack of understanding of the needs of Black and brown patients. A finding that this rule violates the law would not only discourage health care providers from learning and attempting to address these issues, but also paint such efforts as themselves discriminatory. That would be an injustice for the NAACP’s Medicare beneficiaries as well as Black and brown patients generally.

I solemnly swear and affirm under the penalties of perjury that the foregoing is true and correct based on my personal knowledge.

/s/ Danielle Gilliam
Declarant’s Signature

5/11/2023
Date

Danielle Gilliam
Declarant’s Printed Name

¹⁷ *Id.*

¹⁸ Timothy M. Smith, *AMA Guidelines Offer Path to Prevent Discrimination In Medicine* (June 15, 2021), <https://www.ama-assn.org/delivering-care/health-equity/ama-guidelines-offer-path-prevent-discrimination-medicine>.